IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 12TH FEBRUARY 2007 / 23RD MAGHA 1928

WP(C).No. 13674 of 2006(C)

OS.325/2005 of MUNSIFF COURT, CHITTUR

PETITIONER:

BASHEERKHAN, S/O.ABDULKHADERKHAN,
ALAYAR, VANDITHAVALAM VILLAGE, CHITTUR TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:

1. **SUBHADRA, W/O. VENU,**
   EZHUTHANI, VANDITHAVALAM VILLAGE, CHITTUR TALUK,
   PALAKKAD DISTRICT.

2. **THE PEOPLE OF ALAYAR AND EZHUTHANI,**
   VANDITHAVALAM VILLAGE, CHITTUR TALUK,PALAKKAD DIST
   REPRESENTED BY KUTTAPPAN, S/O. MUTHU, ALAYAR
   VANDITHAVALAM VILLAGE, CHITTUR TALUK,PALAKKAD DIST

3. **SANKARAN, S/O. CHAMI,**
   MALAY - EZHUTHANI, VANDITHAVALAM VILLAGE,
   CHITTUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.BINOY VASUDEVAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 13674/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PLAINT IN OS.NO.325/05 DT.30.7.05 ON THE FILE OF MUNSIFF'S COURT, CHITTUR.

EXT.P2:- COPY OF THE PARTITION DEED NO.951/1985 ON THE FILE OF CHITTUR SUB REGISTRY OFFICE.

EXT.P3:- COPY OF THE POSSESSION CERTIFICATE DT.14.5.04 ISSUED BY THE VILLAGE OFFICER TO THE PETITION.

EXT.P;4;- COPY OF THE TAX RECEIPT DT.2.8.04 ISSUED BY THE VILLAGE OFFICER IN RESPECT OF THE PLAINT SCHEDULE PROPERTY TO THE PETITIONER.

EXT.P5:- COPY OF THE AFFIDAVIT IN SUPPORT OF IA.2195/05 IN OS.NO.325/05 ON THE FILE OF MUNSIFF'S COURT , CHITTUR, DT.6.10.05.

EXT.P6:- COPY OF THE OBJECTION DT.1.12.05 FILED BY THE RESPONDENT NO.1 TO EXT.P5.

EXT.P7:- COPY OF THE ORDER DT.111.1.06 PASSED IN IA.NO.2195/05 IN OS.325/05 ON THE FILEOF MUNSIFF'S COURT, CHITTUR DT. THIS THE 19TH DAY OF MAY, 2006.

/TRUE COPY/

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K.P.BALACHANDRAN, J.

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W.P.(C)NO.13674 OF 2006

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Dated this the 12th day of February 2007

JUDGMENT

The petitioner is the plaintiff in O.S.325 of 2005 on the file of the Munsiff's Court, Chittur. The suit Ext.P1 is for declaration and consequential permanent injunction. The “A” relief prayed for in Ext.P1 is as follows:

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All the same he moved I.A.2195 of 2005 in O.S.325/2005 (Ext.P5) seeking for leave being granted to defendants 2 and 3 to represent the public who are interested in opposing the claim advanced in the plaint. The learned Munsiff rejected the leave sought for under Order 1 Rule 8 vide Ext.P7 order for the reason

the defendants 2 and 3 had filed written statement contending that they are not necessary or proper parties to the suit and further they have supported the plaint allegations and that they are persons sailing along with the plaintiff and therefore they are not representatives of the local people. The order was so passed by the Munsiff considering the vehement objections of the first defendant contending that defendants 2 and 3 are not representatives of the local people and they are not competent to represent the local people who are affected by the prayer advanced in the plaint and who are interested in resisting the suit. In view of the averments in paragraph 3 of Ext.P1 plaint regarding O.S.353/2002 instituted by the first defendant's husband against the plaintiff and the further allegation that the first defendant caused obstruction, it is evident that atleast the first defendant is interested in resisting the suit. Strangely enough though she is impleaded as the first defendant, leave was being sought for by the petitioner to prosecute the case against defendants 2 and 3 as representing the local people who are residents of Alayar and Ezhuthani to the exclusion of the first

defendant. In as much as defendants 2 and 3 are supporting the plaint claim, Ext.P7 order deserves to be upheld and I do so without prejudice to the petitioner moving for sanction to prosecute the case with defendant no.1 as also anybody else, as the representatives of the local people interested in resisting the suit to protect their common interest.

This writ petition is disposed of with the above observations.

K.P.BALACHANDRAN, JUDGE

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